

Wildlife and Countryside Link briefing for Defra delegation to CoP8 to the Stockholm Convention

Need for a robust compliance mechanism under Article 17

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Wildlife and Countryside Link (Link) brings together 46 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment.

Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together we have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This document is supported by the following Link members:

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Why there needs to be an enforcement mechanism under the Convention

The Stockholm Convention was created to address Persistent Organic Pollutants (POPs), including polychlorinated biphenyls (PCBs), and entered into force in 2004. There are now 180 Parties to the Convention which have committed to seek the elimination of PCBs through prohibiting their production and use. However, despite wide global support for addressing PCBs, a 2015 United Nations Environment Programme (UNEP) assessment estimates that around 14 million tonnes – the vast majority – of PCB-containing or PCB-contaminated equipment and materials still require elimination. It also revealed that efforts to date have only eliminated 11- 22% of this equipment and these materials. Clearly there has been insufficient action by Parties to the Convention to address this severe and persistent threat.

A recent studyⁱⁱ showed that, although banned organochlorine pesticides like DDT and dieldrin have declined significantly in concentration in marine top predators in Europe, PCBs (a POP) have stopped declining and still persist at excessively high concentrations in killer whales (*O. orca*), bottlenose dolphins (*T. truncatus*) and striped dolphins (*S. coeruleoalba*) in the Northeast Atlantic and the Mediterranean. PCB concentrations in European cetaceans are the highest globally – much higher than cetaceans in the US/Canada – and are still widely associated with long-term population declines and low or zero rates of reproduction.

Ongoing sources of PCB pollution are entering the environment due to a systemic underperformance of Parties to the Convention in implementing their obligations, with the

result that many European and global cetacean populations remain severely threatened by PCBs.

The Stockholm Convention was drafted with the intention of creating a compliance and enforcement mechanism to help ensure its effective implementation. We believe the UK should stand up for the marine environment and cetaceans at risk from PCB pollution by helping to create a strong, enforceable compliance framework under the Convention in order to effectively incentivise Parties to take their commitments seriously, and to help eliminate PCBs.

We believe that in order for the compliance framework to be robust, Article 17 negotiations need to ensure that key features are included in the final compliance procedures and institutional mechanisms under the Convention.

What features should be included in the Stockholm Convention's compliance framework?

1. Compliance submissions may be submitted to the Compliance Committee by either Parties or non-Party entities, such as the Secretariat.

By creating a 'Secretariat trigger', compliance submissions will be able to be initiated without a diplomatic backlash between countries. This feature will strengthen enforcement under the Convention as a compliance mechanism is more likely to be used when there is an independent third party available.

2. A procedure that enables both Parties and civil society to alert compliance issues to the non-Party entity.

Under the current draft compliance mechanism document, submissions to the Compliance Committee can only be made by a Party to the Convention, or the Secretariat. The proposed draft states that the Secretariat may only report on what it becomes aware of while exercising specific functions. The function of the Secretariat under the Convention encompasses administrative duties, such as arranging meetings of the CoP, facilitating assistance to the Parties and providing Parties with periodic reports based on the Parties' reporting requirements under the Convention.

It is essential that a process exists whereby civil society (including NGOs) can approach the Secretariat where they have evidence that a Party has not complied with the Convention. The Secretariat (as an independent third party) has standing to investigate the issue and, under Issue 1 (above), to bring a compliance submission if they believe the claims are serious.

This feature will enhance accountability for implementing the Convention. There is a precedent in other Multilateral Environmental Agreements for similar mechanisms; for example, the World Heritage Convention and Ramsar Convention both have similar mechanisms.

3. The compliance mechanism should have scope to assess compliance across all obligations under the Convention, not just specific articles.

The compliance mechanism would be more robust if it applied to all obligations under the Convention, rather than a limited few.

Parties may try to narrow the scope of the compliance mechanism with the aim of making the mechanism powerless. For example, Parties may seek to exclude essential articles, such as Article 5 and Article 6, which outline '*Measures to reduce or eliminate releases from unintentional production*' and '*Measures to reduce or eliminate releases from stockpiles and wastes*'. The mechanism should not be limited to articles that, if enforced in isolation, will undermine the effectiveness of enforcement. For example, if Article 10 concerning '*Public information, awareness and education*' were to be included in the scope of the compliance mechanism without Article 5 and 6, then the implementation of the goal of the Convention to dispose of PCBs would not be realised.

4. The Compliance Committee must make decisions by majority vote.

Consensus decision-making on compliance matters would negate the effectiveness of any enforcement mechanism. For example, if a Party accused of an infraction could vote against a decision and prevent a consensus, it could thereby thwart any compliance decision.

5. The mechanism should include an implementation fund.

The Compliance Committee should have the option to seek funds from an implementation fund to provide compliance assistance to an infracting Party prior to making a determination on non-compliance. The Montreal Protocol is a good example of a Multilateral Environmental Agreement that has a successful implementation fund, and which has effectively improved implementation and mitigation compliance complaints.

Developed countries claim the Global Environmental Facility (GEF) under UNEP covers this already, and they do not want to incentivise Parties to be non-compliant in order to get funds. However, over the past 20 years GEF has insufficiently funded chemical matters, including the Stockholm Convention. Unless significant capacity-building is provided to developing countries, PCBs will continue to be a major issue for them.

If a compliance mechanism is to work for both developing and developed countries alike, it will need a funding mechanism to help the former.

6. The CoP should be authorised to take actions, such as penalties or remediation assistance, where non-compliance is determined by the Compliance Committee.

This feature allows the CoP to actually enforce compliance decisions. Parties will be incentivised to take their obligations seriously in order to avoid penalties.

In some situations, developing countries may be non-compliant because they lack capacity, rather than because of negligence. Therefore, remediation assistance needs to be open to them as appropriately decided by the CoP.

We are calling on all countries to be champions for Article 17 negotiations to conclude promptly in 2017, and to establish a mechanism that is effective, accountable, enforceable and able to incentivise all Parties alike.

ⁱ UNEP, 'Preliminary assessment of efforts made towards the elimination of polychlorinated biphenyls' (2015); Stockholm Convention, 'Report of the meeting of the Bureau of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants, Geneva, Switzerland, 28-29 June 2016' (2016).

ⁱⁱ Jepson, Paul D, *et al.* 'PCB pollution continues to impact populations of orcas and other dolphins in European waters' *Nature – Scientific Reports* (2016) 6:18573